IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	09/578,612	Conf. No. 7248
Applicant	:	Georgia Hilton	
Filed	:	May 25, 2000	
TC/A.U.	:	2615	
Examiner	:	Laura A. Grier	
Docket No.	:	WWA-102	
Title	:	GLOBAL VIRTUAL AUDIO PRODUCTION STUDIO	
Customer No.	:	41245	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Reconsideration of the above-identified patent application is hereby respectfully requested due to factual deficiencies in Examiner Grier's rejections. This case stands finally rejected.

Claims 27 and 31 - 33 were rejected under 35 U.S.C. §103(a), as being unpatentable over Nigel Lord, *Masters of Pop Reclaim Fon Memory*, Pro Sound News Europe, August 1998, p. 12, hereinafter LORD, in view of United States Patent No. 5,487,067 for AUDIO DATA COMMUNICATION, issued January 23, 1996 to Takashi Matsushige. While the Examiner has

indicated that only claims 27 and 31 - 33 have been rejected, her discussion indicates that the rejection also appears to apply to claims 35 - 38.

Rejected claim 27 recites:

A plurality of audio spaces comprising substantially acoustically identical enclosures specifically adapted for at least listening to a reproduced sound, each of said plurality of audio spaces being adapted to accommodate a listener and comprising means for selectively electrically connecting one of said plurality of audio spaces to at least one other thereof, said acoustical enclosures each comprising respectively, substantially identical means for reproducing sound comprising an audio mixing console substantially functionally identical to a corresponding audio mixing console in each other of said substantially identical means for reproducing sound in each of said other enclosures in respective ones of said connected audio spaces, whereby a listener accommodated in any of said plurality of substantially acoustically identical enclosures so connected receives a substantially identical listening experience to that of a listener accommodated in any other one of said connected substantially acoustically identical enclosures when a substantially identical audio signal transmitted across said means for selectively electrically connecting said audio spaces is substantially simultaneously applied to each of said means for reproducing sound. [Emphasis added]

In her rejection (June 12, 2006 Final Office Action, page 2), Examiner Grier states: "Lord discloses two identical pre-production studios, with identical mixing desks and ADTS and audio workstations (claim 33), which indicates a plurality of audio spaces comprising acoustically identically enclosures." Examiner Grier has erred in asserting that LORD teaches acoustically identical enclosures. Applicant asserts and is prepared to provide expert opinion that the "teaching of identical pre-production studios" does not necessarily imply that the studios possess the acoustically identically enclosures claimed by Applicant. Such acoustically identical enclosures are critical to the practice of Applicant's invention. Without these, the substantially identical

listening experience that is also critical to the practice of Applicant's invention is not possible. Two pre-production studios, even with identical mixing desks, ADTs, and audio workstations, located within a recording studio facility perform vastly different functions from Applicant's novel Global Virtual Audio Production Studio (GVAPS). Consequently, it would be understandable that the structure of each would be different.

Further, LORD fails to teach or suggest that the two pre-production studios are electrically interconnected such that a substantially identical audio signal may be transmitted across the electrical interconnection to allow the requisite substantially identical listening experiences that are key to the functioning and operability of Applicant's recited invention. While a reference must enable someone to practice the invention in order to meet the anticipation requirement under 35 U.S.C. §102(b), a non-enabling reference may qualify as prior art under 35 U.S.C. §103, BUT ONLY FOR WHAT IS DISCLOSED IN IT. *Symbol Technologies v. Opticon Inc.*, 19 USPQ 2d 1241 - 1247 (CAFC 1985) [emphasis added].

Clearly, LORD is silent on the key elements of claim 27 discussed hereinabove. Adding the teaching of MATSUSHIGE to LORD in no way overcomes the fundamental deficiency of LORD as a reference nor provides substantiation of subject matter that the Examiner has erroneously read into LORD. Applicant respectfully believes that Examiner Grier rejected claims 27 and 31 - 33 in error based upon a misunderstanding of LORD.

In *In re Benno*, 227 USPQ 657 (CAFC 1985), the CAFC upheld dismissal of DANTE as a reference because DANTE "didn't even hint at the problem that appellants sought to solve." Likewise, LORD does not even hint at the problem solved by Applicant's novel GVAPS system.

Further, case law has stipulated that for a reference to be prior art under 35 U.S.C. §103, there must be some basis for concluding that the references would have been considered by one skilled in the particular art on the pertinent problem to which the invention pertains. *In re Horn, Horn, Horn, and Horn*, 203 USPQ 2d 969 (CCPA 1979).

Clearly a publication indicating that a known recording studio was refurbished to contain two identical pre-production studios would have had no relevance to the creation of the GVAPS system of the Applicant. One of skill in the art would not have been motivated to create the complex GVAPS system by noting two identical pre-production studios were installed at the Fon Studio in Sheffield, England.

Another principle upheld in case law is the necessity of a motivation to combine references to establish a prima facie case of obviousness. When a prior art reference requires a selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself. Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making combinations. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 5 USPQ 2d 1143 (CAFC 1988). Clearly such suggestion is lacking in the Examiner's combination; neither cited reference (LORD or MATSUSHIGE) contains such a suggestion. There is simply no overlap of, or relationship between, the LORD and MATSUSHIGE references.

In view of the foregoing remarks, the Honorable panel is respectfully requested to reverse the rejection of claims 27, 31 - 33 and 35 - 38 and allow the subject application to issue as a patent.

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On 9/12/06
(Date of Deposit)

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